

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

JOHNNY BROWN

PLAINTIFF

V.

NO. 4:23-CV-69-DMB-JMV

**PEPSICO, INC.; and NEW BERN
TRANSPORT CORPORATION**

DEFENDANTS

ORDER

On April 11, 2023, Johnny Brown filed a complaint in the United States District Court for the Northern District of Mississippi against Pepsico, Inc., and New Bern Transport Corporation, alleging employment-based claims of race and sex discrimination, retaliation, and infliction of emotional distress. Doc. #1. On June 9, 2023, the defendants filed a motion to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). Doc. #10. Brown then filed an amended complaint against the same defendants on June 21, 2023.¹ Doc. #14.

“[A]n amended complaint supersedes [an] original complaint and renders it of no legal effect unless the amended complaint specifically refers to and adopts or incorporates by reference the earlier pleading.” *King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994). When a motion to dismiss has been filed against a superseded complaint, the proper course is to deny the motion to dismiss as moot. *See, e.g., Sartori v. Bonded Collect Servs.*, No. 2:11-cv-030, 2011 WL 3293408, at *1 (N.D. Miss. Aug. 1, 2011) (“The defendant’s March 26, 2011 motion to dismiss for lack of personal jurisdiction should be denied as moot since the plaintiff filed an Amended Complaint subsequent to the filing of the first motion to dismiss.”); *Fit Exp., Inc. v. Circuit-Total*

¹ Federal Rule of Civil Procedure 15(a)(1) authorizes a party to amend a pleading “to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.”

Fitness, No. 1:07-cv-62, 2008 WL 4450290, at *1 (N.D. Miss. Sep. 29, 2008) (“Because Plaintiff’s Counterclaims were amended, Defendants’ previously filed Motion to Dismiss ... is denied as moot.”). Because Brown’s amended complaint does not reference or incorporate his original complaint, *see* Doc. #14, and thus supersedes his original complaint, the motion to dismiss the original complaint [10] is **DENIED as MOOT**.

SO ORDERED, this 6th day of July, 2023.

/s/Debra M. Brown
UNITED STATES DISTRICT JUDGE